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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/677,457	10/02/2003	Kirk Sawall	D5-047-06-US	8499
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54092      7590      05/04/2006

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NORTH OAKS, MN 55127

EXAMINER
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RODRIGUEZ, JOSEPH C

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

<b>Application No.</b> 10/677,457	<b>Applicant(s)</b> SAWALL ET AL.	
<b>Examiner</b> Joseph C. Rodriguez	<b>Art Unit</b> 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on \_\_\_\_\_.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 3-61 is/are pending in the application.  
4a) Of the above claim(s) 3-5, 32-54 and 57-61 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 6-27, 29-31, 55 and 56 is/are rejected.
- 7)  Claim(s) 28 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 02 October 2003 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. 09/936,718.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_.

***Final Rejection***

Applicant's arguments filed 3/6/06 have been fully considered but they are not persuasive for reasons detailed below.

The prior art rejections are maintained or modified as follows:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-8, 10, 12-16, 18, 21, 23-27, 29-31 and 55-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Lehmann et al. ("Lehmann")(EP 167999 A2).

Regarding claims 6, 8, 10, 12, 14-16 and 24-27, these claims are clearly anticipated by figure 3.

Regarding claims 6, 8, 10, 12, 14-16, 24-26 and 29, these claims are clearly anticipated by figure 4.

Regarding claims 30, 31, 55, 56, these claims are anticipated by figure 1, wherein figure 1 is used to show that the various mounting pin embodiments are implicitly connected to screens with a support and sub frame (fig. 1, with screens 2 and support frame ribs 12 wherein sub frame structure is regarded as inherent).

Regarding claims 7 and 13, it is implicit from the substantially similar structures (fig. 3) that the insertion force is as claimed. Further, Applicant is respectfully reminded

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that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, the mounting pin is certainly capable of being bolted to the support frame and of being inserted and removed with the claimed forces.

Regarding claims 18, 21, 23, Lehmann teaches that the mounting pin can be made of the abrasion resistant material plastic (See Partial Translation, p. 1).

Claims 6, 7, 9-13, 15, 18, 21, 23-27, 29-31, 55-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt et al. ("Schmidt")(US 4,871,288).

Regarding claims 6, 9-12, 15-16, 24-27, 29, these claims are clearly anticipated (Fig. 1-4, pin comprising head 12 and stem 11; col. 1, ln. 25 et seq. describing plastic bolts 10 being inserted into screen frame 6 to secure screen elements 1).

Regarding claims 30, 31, 55, 56, Schmidt (Fig. 3, 4) teaches a support frame (6) with a mounting rib (5), wherein these figures are regarded as exemplary mounting pin embodiments that show such that a plurality of pins and mounting structures are inherent.

Regarding claims 7 and 13, it is implicit from the substantially similar structures that the insertion force is as claimed. Further, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, the mounting pin is

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certainly capable of being bolted to the support frame and of being inserted and removed with the claimed forces.

Regarding claims 18, 21, 23, Schmidt teaches that the mounting pin can be made of the abrasion resistant material plastic (col. 1, ln. 25 et seq.).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17, 19-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lehmann or Schmidt in view of what is well known in the art.

Lehmann or Schmidt as set forth above teach all that is claimed except for expressly teaching the mounting pin structure made of various materials, such as composite, ceramic and steel. The mere choice of materials, however, is not seen as a basis for patentability. That is, the use of the different materials is well known in the art and can be regarded as a mere design choice that is obvious. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Lehmann or Schmidt as is well known in the art.

### ***Response to Arguments***

Applicant's arguments that the prior art fails to teach the claimed features are unpersuasive. In particular, Applicant argues that the mounting structures taught by Lehmann are profiles rather than pins. Here, Applicant is respectfully reminded that the claim limitations are interpreted as broadly as reasons allows and that it is not unreasonable to regard the Lehmann mounting structures as pins. That is, a pin can be regarded as a small, slender structure used to attached things (see e.g., [wordnet.princeton.edu/perl/webwn](http://wordnet.princeton.edu/perl/webwn) describing pin as a small slender (often pointed) piece of wood or metal used to support or fasten or attach things). Moreover, the partial translation of Lehmann suggests that the profile may be replaced by a peg, thus further undermining Applicant's argument (See NPL, 8/30/04, p. 3, mid-page). Further, the "profiles" taught by Schmidt further demonstrate that mounting structures without cylindrical heads can be regarded as pins. Consequently, as a reasonable interpretation of the prior art anticipates Applicant's claimed invention, the claims stand rejected.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

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1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-31 and 55-56 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,634,505. Although the conflicting claims are not identical, they are not patentably distinct from each other as Applicant's amended description of the mounting pin head is merely an alternate description of the frustoconical mushroom head claimed in the allowed patent. Further, Applicant's claiming of the head and stem made from a variety of different materials (see e.g., claims 6-22) cannot be regarded as a patentable distinction when it is well known to construct screening components from a variety of a materials. Consequently, these claims stand rejected on the basis of nonstatutory obviousness-type double patenting.

#### ***Allowable Subject Matter***

Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if the double patenting issues are resolve and if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Election/Restrictions***

This application contains claims 3-5, 32-54 and 57-61 drawn to an invention nonelected without traverse in the paper filed 1/31/05. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above. Applicant's amendment necessitated any new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



***Conclusion***

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Joseph C Rodriguez** whose telephone number is **571-272-6942** (M-F, 9 am – 6 pm, EST).

The **Official** fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

The examiner's **UNOFFICIAL Personal fax number** is **571-273-6942**.

Further, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only.

For more information about the PAIR system, see

**<http://pair-direct.uspto.gov>**

Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at **866-217-9197** (Toll Free).

Alternatively, inquiries of a general nature or relating to the status of this application or proceeding can also be directed to the **Receptionist** whose telephone number is **571-272-6584** or to the Supervisory Examiner, Kathy Matecki, **571-272-6951**.

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Signed by Examiner Joseph Rodriguez

Jcr

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May 2, 2006

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name 'Joseph Rodriguez'. The signature is positioned to the right of the printed text.